FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 24/2007

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 21, 2007.

Heard Shri Nemade for the appellant.

The appellant is the original defendant. A suit was filed by the respondent/plaintiff for possession of the suit property. The plaintiff also prayed that the defendant be directed to accept Rs.1,12,812/- from the plaintiff and to hand over possession of the suit property to the plaintiff. The plaintiff also sought for direction for enquiry into mesne profit from 27/2/2002 till the possession of the property was delivered to the plaintiff.

It was the case of the plaintiff that the defendant had executed a registered sale deed in favour of the plaintiff on 16/6/2001. Total consideration payable for the sale transaction was Rs. 1,37,812/- and Rs. 25,000/- was paid by the plaintiff to the defendant at the time of registration of the sale deed. The balance consideration was to be paid on 27/2/2002 and it was also incorporated in the sale deed that the defendant would, after receiving the balance consideration, pass a receipt for the same in favour of

the plaintiff. It is the case of the plaintiff that though the plaintiff went to the office of the Sub Registrar on 27/2/2002 for paying the balance consideration, the defendant refused to accept the same from the plaintiff and further refused to deliver the possession of the suit property to the plaintiff. The plaintiff also noticed that the defendant had applied to the revenue authority for cancellation of the sale deed and, therefore, the plaintiff immediately filed the suit seeking for the aforesaid reliefs.

The defendant filed his written statement and denied the claim of the plaintiff. It was pleaded in the written statement that the balance amount of Rs. 1,12,812/- was to be paid to the defendant positively on 27/2/2002 and since the plaintiff failed to pay the aforesaid amount to the defendant on 27/2/2002, the defendant had rightly applied for cancellation of the sale deed dated 16/6/2001.

The trial Court dismissed the suit of the plaintiff holding that the plaintiff had failed to prove that he was ready and willing to pay the balance consideration on 27/2/2002. The trial Court further held that the plaintiff had failed to prove that he became the owner of the suit field on the basis of the sale deed dated 16/6/2001. Consequently, the trial Court held that since the plaintiff was not ready to deposit the balance consideration on 27/2/2002, title in the property did not pass to the plaintiff.

The findings of the trial Court were reversed by the appellate Court in an appeal filed by the plaintiff

against the judgment dated 5/8/2004. The appellate Court, after considering the evidence tendered by the parties on record, held that the plaintiff had proved that the defendant had intended to sell the suit field to the plaintiff and the plaintiff was also ready and willing to pay the balance consideration to the defendant on 27/2/2002. The appellate Court, therefore, directed the defendant to hand over the possession of the suit property to the plaintiff, after accepting the balance consideration of Rs. 1,12,812/- from the plaintiff. The judgment of the appellate Court is challenged in this second appeal.

Shri Nemade, the learned counsel for the appellant, submitted that the appellate Court had committed a grave error in reversing the finding recorded by the trial Court, without any cogent reason and without considering the evidence on record. He further submitted that no title could be conferred on the plaintiff because the possession of the property was not delivered to the plaintiff at the time of execution of the sale deed on 16/6/2001 and since the plaintiff had failed to prove that he was willing to pay the balance consideration on 27/2/2002, the appellate Court was not justified in reversing the findings recorded by the trial Court. The counsel for the appellant further submitted that due to the non-payment of the part of consideration, the title over the suit property could not be passed on to the plaintiff in view of the provisions of Section 54 and Section 8 of the Transfer of Property Act. It is further canvassed that the appellate Court

was also not justified in directing an enquiry into mesne profit as the plaintiff was not willing to part with the balance consideration on 27/2/2002. It was canvassed on behalf of the appellant that the terms of the document could be considered for recording the finding on the question as to whether the title in the suit property passed on to the plaintiff and the recital in the sale deed dated 16/6/2001 showed that the delivery of possession of the property was to be made on receipt of the balance consideration on 27/2/2002.

The counsel for the appellant then relied on the decisions in AIR 1964 Orissa 239, 1995(1) Civil Law Journal 381 and AIR 1998 S.C. 3006, to substantiate his submission that the title cannot be passed on to the vendee merely on the basis of the sale deed and when the non-payment of part consideration was proved, the Courts are bound to infer that the title in the property did not pass on to the vendee in terms of the registered sale deed. The counsel for the appellant then relied on the decision reported in 1995(2) Civil Law Journal page 648, to canvass that a finding of fact recorded by the trial Court cannot be reversed without recording reasons therefor or without any valid ground.

I have perused the plaint, written statement and the judgments rendered by the trial and the appellate Courts. The plaintiff has categorically stated in the plaint that he was ready to pay the balance consideration on 27/2/2002, but the defendant refused to accept the same and hand over the possession of the property to the plaintiff. The plaintiff has further

pleaded that in stead of handing over the possession of the property to the plaintiff, the defendant sought for the cancellation of the sale deed before the revenue authority. The trial Court, after considering the pleadings of the parties, held that the plaintiff had not produced independent evidence before the Court to show that he was ready to pay the balance consideration on 27/2/2002. The trial Court, therefore, held that the title in the suit property was not transferred in favour of the plaintiff since he was not ready to pay the balance consideration as agreed by the terms of the sale deed, on 27/2/2002.

The appellate Court, however, reversed the finding recorded by the trial Court on the willingness of the plaintiff to pay the balance consideration on 27/2/2002. The appellate Court considered the oral evidence tendered by the plaintiff and further considered the fact that the plaintiff had purchased the stamp paper from the Sub Registrar's Office on 27/2/2002, which was marked as Exh.31. The appellate Court considered the evidence of the plaintiff and his witnesses who categorically deposed that the plaintiff had attended the office of the Sub Registrar on 27/2/2002 along with the balance consideration. It was further deposed by the plaintiff that though the defendant attended the office of the Sub Registrar on 27/2/2002, the defendant refused to accept the amount from him and on the other hand applied for cancellation of the sale deed. The plaintiff, therefore, had ultimately issued a notice to the defendant on 22/3/2002, but the

defendant, by his reply to the notice, refused to accept the balance consideration. The appellate Court recorded a categorical finding of fact that it was clear from the oral and documentary evidence produced on the record that the plaintiff was ready and willing to pay the balance consideration to defendant on 27/2/2002 and the defendant was not ready to accept the same. Consequently, the appellate Court held that the plea of the defendant that the sale deed executed in favour of the plaintiff was not legal and valid was not acceptable. The appellate Court, therefore, directed the defendant to accept the balance amount of Rs. 1,12,812/- from the plaintiff and execute a receipt to that effect in favour of the plaintiff and hand over the possession of the suit property to the plaintiff.

In the backdrop of the aforesaid facts, it cannot be said that the title in the suit property could not be passed on to the plaintiff merely because the possession was not handed over by the defendant to the plaintiff, as it was to be handed over on 27/2/2002 after receiving the balance consideration. In view of the finding recorded by the appellate Court to the effect that the plaintiff was willing to pay the balance consideration on 27/2/2002, it cannot be said that the appellate Court was not justified in decreeing the suit insofar as an enquiry into mesne profit was concerned. The judgments relied upon by the appellant and reported in AIR 1964 Orissa 239, 1995(1) Civil Law Journal 381 and AIR 1998 S.C. 3006 will not be of any assistance to the case of the appellant as it is laid down

in the aforesaid decisions that the intention of the parties should be gathered from the document itself and in the instant case, the document merely recites that the possession of the property was to be delivered by the defendant to the plaintiff on 27/2/2002, after the plaintiff paid the balance amount to the defendant. The term in the sale deed was plain and simple and the appellate Court has recorded a finding that the plaintiff was willing to pay the balance consideration to the defendant on 27/2/2002, but the defendant refused to accept the same. In view of the facts involved in this case, a ratio laid down in the aforesaid three decisions would not be applicable to the facts of the case. In fact, in this case, the appellate Court has decided the matter by considering the terms of the document and extraneous circumstances are not considered by the appellate Court while reversing the finding of the trial Court. Similarly, judgment reported in 1995(2) Civil Law Journal 648 is also hardly of any help to the appellant as the aforesaid decision reiterates the settled proposition of law that a finding cannot be reversed without recording any reason for reversing the same or without any valid ground. As already discussed herein above, the appellate Court has considered the oral as well as documentary evidence tendered by the parties on record to hold that the plaintiff was willing to pay the balance consideration on 27/2/2002, and the defendant had refused to accept the same. The appellate Court was, therefore, justified in granting a decree for possession in favour of the plaintiff by

directing the defendant to accept the balance consideration towards the sale of the property.

No substantial question of law arises for consideration in this second appeal. The finding recorded by the appellate Court is neither perverse nor suffer from any patent illegality or irregularity. In fact, the approach of the appellate Court in appreciating the evidence on record to arrive at the findings recorded in the impugned judgment, is extremely reasonable and for the aforesaid reasons, the second appeal is liable to be dismissed.

Second appeal is dismissed as such with no order as to costs.

JUDGE

RMP